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Department of the Air Force—Assistant Secretary of the Air Force (Acquisition).

The directors of the defense agencies have been delegated authority to act as senior procurement executive for their respective agencies, except for such actions that by terms of statute, or any delegation, must be exercised by the Under Secretary of Defense (Acquisition, Technology, and Logistics).

[56 FR 36287, July 31, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting section 202.101, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36288, July 31, 1991, unless otherwise noted.

### **Subpart 203.1—Safeguards**

#### **203.103 Independent pricing.**

#### **203.103-2 Evaluating the certification.**

(b)(3) Report the matter in accordance with 209.406-3 or 209.407-3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[64 FR 62984, Nov. 18, 1999]

#### **203.104 Procurement integrity.**

#### **203.104-5 Disclosure of proprietary and source selection information.**

(d)(4) For purposes of FAR 3.104-5(d)(4) only, DoD follows the notification procedures in FAR 27.404(h). However, the first sentence in FAR 27.404(h) does not apply to DoD.

[56 FR 36288, July 31, 1991, as amended at 62 FR 2612, Jan. 17, 1997]

#### **203.104-10 Violations or possible violations.**

(d)(3) When referring a violation to the agency debarring and suspending official, use the procedures at 209.406-3 or 209.407-3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[64 FR 62984, Nov. 18, 1999; 65 FR 4864, Feb. 1, 2000]

## **Subpart 203.2—Contractor Gratuities to Government Personnel**

### **203.203 Reporting suspected violations of the Gratuities clause.**

Report suspected violations of the Gratuities clause in accordance with 209.406-3 or 209.407-3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[56 FR 36288, July 31, 1991, as amended at 64 FR 62984, Nov. 18, 1999]

## **Subpart 203.3—Reports of Suspected Antitrust Violations**

### **203.301 General.**

(b) Report suspected antitrust violations in accordance with 209.406-3 or 209.407-3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[56 FR 36288, July 31, 1991, as amended at 64 FR 62984, Nov. 18, 1999]

## **Subpart 203.4—Contingent Fees**

### **203.405 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(b) Report suspected fraud or other criminal conduct in accordance with 209.406-3 or 209.407-3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[56 FR 36288, July 31, 1991. Redesignated at 62 FR 34121, June 24, 1997, as amended at 64 FR 62984, Nov. 18, 1999]

## **Subpart 203.5—Other Improper Business Practices**

### **203.502 Subcontractor kickbacks.**

Report suspected violations of the Anti-Kickback Act in accordance with 209.406-3 or 209.407-3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[56 FR 36288, July 31, 1991, as amended at 64 FR 62984, Nov. 18, 1999]

### **203.502-2 General.**

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under the Anti-Kickback Act of 1986:

- (i) U.S. Army Criminal Investigation Command.
- (ii) Naval Criminal Investigative Service.
- (iii) Air Force Office of Special Investigations.
- (iv) Defense Criminal Investigative Service.

[56 FR 36288, July 31, 1991, as amended at 60 FR 29497, June 5, 1995]

### **203.570 Prohibition on persons convicted of frauds or other defense-contract-related felonies.**

#### **203.570-1 Scope.**

This subpart prescribes policies and procedures to implement 10 U.S.C. 2408.

#### **203.570-2 Policy.**

(a) A contractor or subcontractor shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD, to serve—

- (1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;
- (2) On its board of directors;
- (3) As a consultant, agent, or representative; or
- (4) In any capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.

(b) DoD has sole responsibility for determining the period of the prohibition described in paragraph (a) of this subsection. The prohibition period—

- (1) Shall not be less than 5 years from the date of conviction unless the agency head or a designee grants a waiver in the interest of national security; and
- (2) May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination of the need for the longer period. The agency shall provide a copy of the determination to the Bureau of Justice Assistance, U.S. Department of

### **203.570-3**

Justice, 810 Seventh Street, NW, Washington, DC 20531.

[64 FR 14398, Mar. 25, 1999]

#### **203.570-3 Waiver.**

(a) The contracting officer shall—

(1) Review any request for waiver; and

(2) Deny the request if the contracting officer decides the waiver is not required in the interests of national security; or

(3) Forward the request to the head of the agency or designee for approval if the contracting officer decides the waiver may be in the interest of national security.

(b) The head of the agency or designee shall report all waivers granted, and the reasons for granting the waiver, to the Under Secretary of Defense (Acquisition, Technology, and Logistics), who will forward the report to Congress as required by 10 U.S.C. 2408(a)(3).

[56 FR 36288, July 31, 1991, as amended at 65 FR 39074, June 27, 2000]

#### **203.570-4 Reporting.**

When a defense contractor or first-tier subcontractor is found in violation of the prohibition in 203.570-2, report the matter in accordance with 209.406-3 or 209.407-3, and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities.

[64 FR 62984, Nov. 18, 1999]

#### **203.570-5 Contract clause.**

Use the clause at 252.203-7001, Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items.

[64 FR 14398, Mar. 25, 1999]

### **Subpart 203.7—Voiding and Rescinding Contracts**

#### **203.703 Authority.**

The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the

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Senate, without power of redelegation. For the defense agencies, for purposes of this subpart, the agency head designee is the Under Secretary of Defense (Acquisition, Technology, and Logistics).

[56 FR 36288, July 31, 1991, as amended at 60 FR 61592, Nov. 30, 1995; 65 FR 39704, June 27, 2000]

### **Subpart 203.70—Contractor Standards of Conduct**

#### **203.7000 Policy.**

Government contractors must conduct themselves with the highest degree of integrity and honesty. Contractors should have standards of conduct and internal control systems that—

(1) Are suitable to the size of the company and the extent of their involvement in Government contracting,

(2) Promote such standards,

(3) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts, and

(4) Ensure corrective measures are promptly instituted and carried out.

#### **203.7001 Procedures.**

(a) A contractor's system of management controls should provide for—

(1) A written code of business ethics and conduct and an ethics training program for all employees;

(2) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(3) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(4) Internal and/or external audits, as appropriate;

(5) Disciplinary action for improper conduct;

(6) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and

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(7) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

(b) Contractors who are awarded a DoD contract of \$5 million or more must display DoD Hotline Posters prepared by the DoD Office of the Inspector General unless—

(1) The contract will be performed in a foreign country; or

(2) The contractor has established an internal reporting mechanism and program, as described in paragraph (a) of this section.

### 203.7002 Contract clause.

Use the clause at 252.203-7002, Display of DoD Hotline Poster, in solicitations and contracts expected to exceed \$5 million, except when performance will take place in a foreign country.

## PART 204—ADMINISTRATIVE MATTERS

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.